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Quebec Accord

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IMMIGRATION: THE CANADA-QUEBEC ACCORD

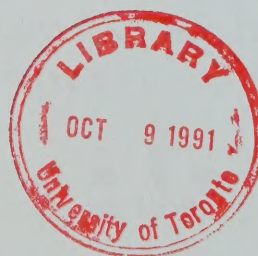
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IMMIGRATION: THE CANADA-QUEBEC ACCORD

On 5 February 1991, the Honourable Barbara McDougall, federal Minister of Employment and Immigration, and Madame Monique Gagnon-Tremblay, Quebec *ministre des Communautés culturelles et de l'Immigration*, signed the Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens, to come into force on 1 April 1991. The new agreement comes on the heels of the failure of the Meech Lake Accord and accomplishes what would have taken place in the area of immigration had Meech Lake passed. The purpose of this paper is to outline the contents of the new Accord, concentrating on those features which differ from the Cullen-Couture Agreement, which it replaces.

BACKGROUND

Canada and Quebec have had immigration agreements since 1971, the 1978 Cullen-Couture Agreement being the third.⁽¹⁾ Under that Agreement, Quebec has played a major role with regard to independent immigrants, that is, those selected on the basis of economic and social factors designed to assess their ability to adapt and to contribute to the province. For this purpose, Quebec enacted its own points system, which, while it has many of the same features as the federal one, nevertheless differs in some significant respects. Under the new Accord, Quebec's role with regard to independent immigrants will continue, and its right to select all other immigrants to whom selection criteria apply now or might

(1) The Cullen-Couture Agreement came into effect on 30 March 1979. It was preceded by the Lang-Cloutier (1971) and Andras-Bienvenue (1975) Agreements.

apply in the future is made explicit. In many ways, however, the new Accord resembles the former agreement; indeed, one of the preliminary statements is that the new Accord is "inspired by the Cullen-Couture Agreement" and it will be remembered that the agreement contemplated by Meech Lake was to "incorporate the principles of the Cullen-Couture agreement" The provisions governing the delivery of reception and integration services, however, are new.

OUTLINE OF THE NEW ACCORD

A. General

The initial sections of the Accord state its contents and objectives. Section 1 sets out the four areas covered by the Accord:

- * the selection of persons coming permanently or temporarily to Quebec;
- * their admission into Canada;
- * their integration into Quebec society; and
- * the determination of levels of immigration to Quebec.

Section 2 introduces an important new objective of the Accord for Quebec: to preserve Quebec's demographic weight within Canada and to integrate immigrants to Quebec in a manner that respects the distinct society of Quebec. This objective is to be achieved primarily by Quebec's increased role in the setting of immigration levels, the attempt to ensure numbers of immigrants proportional to the population of the province, and Quebec's assumption of all integration services, with a particular emphasis on providing permanent residents with the means to learn the French language.

Canada remains responsible for national standards and objectives relating to immigration, the admission of all immigrants and the admission and control of visitors. Admission in relation to immigrants may be taken to mean the application of the criteria relating to criminality, security and health, in addition to the administrative processing of

applications and physical admission to Canada at ports of entry. Quebec is responsible for the selection, reception and integration of immigrants to Quebec, and Canada commits itself not to admit any immigrant into Quebec who does not meet Quebec's selection criteria.

B. Immigration Levels (Sections 5 - 8)

The new Accord incorporates the commitment of the Meech Lake Accord that Quebec should receive the same percentage of the total number of immigrants admitted to Canada as is its percentage of the Canadian population, with the right to exceed this figure by five per cent for demographic reasons. The troublesome word "guarantee" that was contained in the Meech Lake Accord has now been dropped. Instead, both parties undertake to pursue policies to achieve that goal. For Canada, such policies could include providing sufficient resources abroad to process immigration applications, particularly in Francophone countries, and setting higher processing targets for those posts.

Canada remains responsible for establishing levels of immigration annually, taking into account Quebec's advice on the number of immigrants that it wants to receive. For the first time, a formal timetable for consultation is set out whereby Canada will inform Quebec by 30 April of each year of the options being considered with respect to future immigration levels, broken down into the various immigration classes.⁽²⁾ Quebec, in turn, will inform Canada before 30 June of the number of immigrants it wishes to receive in the coming year or years, also broken down into classes. Following this process, the *Immigration Act* requires that the federal Minister table an annual levels report by the end of October, if Parliament is then sitting, or within 15 days of the resumption of sitting of either House.

(2) The *Immigration Act* also requires that the Minister consult with the provinces on regional demographic needs, labour market considerations and settlement issues. In view of this, it may be assumed that the other provinces would also benefit from having this information by 30 April of each year.

A new provision commits Quebec to receive, out of the total number of refugees and persons in similar circumstances received by Canada, a percentage at least equal to the total number of immigrants that it has undertaken to receive.

C. Family Reunification (Family Class and Assisted Relatives - Sections 13 - 16; 21)

Family class members are not "selected" in the same sense as other immigrants. If selection criteria were desired in the future, the Accord provides that Canada would have sole responsibility for establishing them, with Quebec responsible for their application to immigrants destined to that province. In Annex A⁽³⁾ (section 18), Canada commits itself to facilitate interviews of family class applicants where Quebec desires, and Quebec commits itself to ensure that the processing of those applicants takes place during the normal time period. Essentially, it would appear that family class processing under the new Accord will continue as it did under Cullen-Couture.

The treatment of assisted relatives will also continue much as before. Under Cullen-Couture, assisted relatives could immigrate to Quebec if they received sufficient points under either Quebec's or Canada's system. The Accord continues that approach, although the requirement that the two systems award the same number of bonus points has been dropped.

Both family class and assisted relative applicants must be sponsored by a permanent resident or citizen of Canada. For such applicants destined to Quebec, that province will continue, as it did under Cullen-Couture, to administer sponsorship undertakings and set the financial criteria for sponsors.

D. Refugees (Sections 17 - 20)

As in the past, Canada will continue to be solely responsible for the processing of claims to refugee status made by people already in Canada. With regard to refugees and others in similar

(3) There are four annexes to the Accord and they are explicitly made part of it.

circumstances selected abroad, Canada will determine which individuals qualify in these categories and Quebec will choose from among them the individuals it feels are best able to settle in Quebec. The new Accord contains an explicit veto on refugee admissions that is not present in Cullen-Couture ("... Canada shall not admit a refugee ... who is destined to Quebec and who does not meet Quebec's selection criteria.")

As noted above, Quebec also commits itself to taking its appropriate share of refugees and persons in similar circumstances selected abroad.

E. Visitors (Section 22)

The admission to Quebec of three types of visitors will require Quebec's prior consent:

- 1) Foreign students, except those chosen under a federal government program to assist developing countries. This is the same as under Cullen-Couture.
- 2) Temporary foreign workers whose admission is subject to federal requirements relating to the availability of Canadian workers. Cullen-Couture provided for an exchange of relevant information and views.
- 3) Foreign visitors entering to receive medical treatment. This is the same as under Cullen-Couture.

F. Reception and Integration (Sections 24 - 29; Annex A, Sections 24-25; Annex B)

As would have been the case had Meech Lake been ratified, Canada commits itself in the new Accord to withdraw from the delivery of services for the reception and linguistic and cultural integration of permanent residents in Quebec. Canada will provide compensation to Quebec for such services as long as they correspond to those offered by Canada in the rest of the country and as long as Quebec enables all permanent residents of the province, whether they were selected by Quebec or not, to have access to them. This latter requirement reflects the fact, noted in one of the recitals at the beginning of the Accord, that the Canadian *Charter of Rights and Freedoms* guarantees freedom of movement to all

permanent residents in Canada. Any permanent resident, therefore, may move to Quebec from any province and be eligible for services on the same basis as immigrants actually selected by Quebec.

Canada alone is responsible for services relating to citizenship, and is not constrained in any way from providing services to Canadian citizens (although not to permanent residents?) relating to multiculturalism or from promoting multiculturalism.

Section 1 of Annex B lists the settlement and linguistic services from which Canada will withdraw. Comparison with the settlement activities outlined in the spending Estimates tabled by the government indicates that it is a comprehensive list. Appendix B also sets out the compensation to be paid to Quebec as follows:

\$75 million for 1991-92
\$82 million for 1992-93
\$85 million for 1993-94
\$90 million for 1994-95.

Total: \$332 million

- * In 1990-91, expenditures in Quebec by the federal government for the services listed in Appendix B were approximately \$46.3 million. Expenditures for 1991-92 therefore represent an increase of 61.9%

After that time, compensation will be the base sum of \$90 million, increasing at the same rate as government spending generally increases (excluding debt service payments). The amount will also increase if there are relative changes in the immigrant flow to Quebec. The amount of money paid to Quebec for settlement and language services cannot diminish under the formulas established under the Accord (although it could be changed by mutual agreement). This means that if the amount of money available for settlement generally were to decrease (or increase less than general government expenditures), Quebec would continue to be guaranteed its base sum of \$90 million as increased by the escalator clause. Even if the number of immigrants to Quebec were to decline significantly in the future, the sums are guaranteed.

When the share of immigrants to Quebec is less than that province's share of the population of Canada as a whole, increases in

compensation are related, in part, to increases in the number of non-Francophone immigrants to Quebec. This no doubt reflects the fact that language training is the most expensive aspect of integration. On the other hand, when Quebec's share of immigrants is more than its share of the Canadian population, increases in compensation are tied, in part, to the proportional change in Quebec's share of immigrants over the previous year.⁽⁴⁾ It is not readily apparent why the most accurate indicator of settlement needs, the ability of an immigrant to speak French, was not used for both situations.

Federal officials have stated that the amount of compensation for settlement and language training allocated to Quebec over the course of the next four years - \$332 million - represents 32% of the federal money budgeted for these purposes.⁽⁵⁾ Throughout the last decade, Quebec received approximately 17% of all immigrants to Canada, with the percentage climbing to approximately 19% in 1990. Whatever the growth in Quebec's share of total immigration over the period 1992-1993 to 1994-1995, compensation payments will grow at an annual average rate of 6.3% throughout this period. This could have an impact on settlement expenditures in the rest of Canada in view of the provision in the February 1991 budget to cap program expenditures at 3%.

G. Administration of the Accord (Annex A)

As in the Cullen-Couture Agreement, the Accord establishes two committees to implement the Accord, the Joint Committee and the

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- (4) One of the possibly unforeseen effects of this formula is that if the number of immigrants were to decline faster in the rest of Canada than in Quebec, thus increasing Quebec's percentage of total immigration to Canada, increased compensation would be payable to Quebec even though the actual number of immigrants to that province had declined.
- (5) This percentage may increase in view of the fact that in his budget of February 1991, Mr. Wilson reduced funds for the Canadian Jobs Strategy (CJS) by \$100 million. This is the program that delivers (among other services) the bulk of language training for immigrants. Because the compensation destined to Quebec is fixed by the Accord, any cuts to the language training component of the CJS will presumably have to be absorbed by the remaining provinces.

Implementation Committee. The Joint Committee must meet at least once a year (as compared to at least quarterly under Cullen-Couture) and will, among other things, approve joint directives, ensure the exchange of information and promotion of joint research projects relating to migration flow, and discuss Quebec's sponsorship criteria. New aspects of the Joint Committee's mandate include monitoring the speed of processing immigrants destined to Quebec, providing an opinion on any changes Canada might wish to make to the definition of classes of immigrants and the inadmissibility criteria, and studying annually the reception and integration services offered by both Canada and Quebec. For the first time, a representative of the Department of External Affairs and International Trade will be a member of the Committee.

The Implementation Committee, which must meet at least twice a year, prepares joint guidelines (called directives in Cullen-Couture) for the implementation of the Accord and provides a forum for discussion of any problems which arise. New to its mandate is the duty to ensure the elimination of duplication between the functions performed by the officials of both parties, and to review proposed changes in the laws of each jurisdiction. A representative of External Affairs will also sit on this Committee for the first time.

It is interesting to note that the Accord contains a mechanism for its amendment, but not for its termination. A termination clause is a common feature of agreements such as this and was found in Cullen-Couture.⁽⁶⁾ Section 33 of the Accord, however, merely states: "This Accord may be re-opened at the request of either party with prior notice of six months. Failing agreement on amendment, the Accord continues in force." It may be presumed that the clause was drafted in that way because the Accord was originally intended to be entrenched in the

(6) Part V, section 6 of the Cullen-Couture Agreement stated: "This Agreement is concluded for a period of three (3) years from the date of its signature. It may, however, be terminated at the request of either party on receipt of written notice at least three (3) months before the expiration of this period of three (3) years. This Agreement will be renewable, on its expiry, by tacit understanding, except that either party may then seek its termination by giving the other a written notice of six (6) months."

Constitution following the passage of Meech Lake. In that form, the Accord would not have been subject to termination by either party at will merely on the giving of notice. It remains to be seen what would happen if, at some point in the future, one party were to become dissatisfied with the Accord and no agreement on amendment could be reached.

H. Other

1. The Investor Program (Annex D)

Appendix D incorporates the text of an agreement reached with Quebec that has been in effect since January 1990 with respect to the investor program. In it, Quebec undertook to administer its program in a manner consistent with the spirit and objectives of the federal regulations and the parties agreed to harmonize their respective standards and practices, although it appears that they have not yet done so. Quebec is responsible for the selection of investors according to its own regulations and policies, as is the case for other independent immigrants; Canada is responsible for their admission.

2. Letter of Understanding

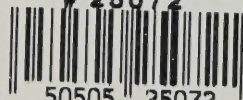
In a letter of understanding accompanying the Accord, the parties agreed that the Implementation Committee would formulate, by 1 April 1991, the joint directives and mechanisms necessary for the smooth implementation of the Accord, retaining as much as possible of the structure formerly in place under the Cullen-Couture Agreement. Quebec also agreed to offer employment in the Quebec Public Service to all permanent employees of the federal government whose jobs are affected by the transfer of settlement services to the province, a commitment that could potentially affect some 60 to 70 people. The parties agreed that appropriate arrangements would be made regarding the pension plans of any employees who accepted the offer.



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